

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 22897 of 2004

Between:

K.Prakash S/o.K Buchaiah
Tenant of Premises H.No.15-5-96 Afzal Gunj, Hyderabad.

..... PETITIONER

AND

- 1 Municipal Corporation of Hyderabad Tank Bund Road,Hyderabad
represented by Commissioner.
- 2 The Assistant City Planner Town Planning Section, Circle No.II
Municipal Corporation of Hyderabad Sardar Mahal, Charminar, Hyderabad.
- 3 Purushotham Upadhyay S/o.Bherumal Upadhyay
R/o.H.No.14-9-617, Gosacut, Jumerat Bazar, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction in the mandamus or otherwise, declaring that the impugned proceedings of the respondents 1 and 2 bearing letter No.3106/TPS/C2/W15/MCH/2004 dt -12-2004 in respect of shop No.15-5-96, situated at Afzal Gunj, Hyderabad, under the purported exercise of power under section 459 of the H.M.C Act is wholly illegal, arbitrary and ultra virus the powers of the respondents 1 and 2 and consequently declare the same as unenforceable and be pleased to pass such other order or orders.

Counsel for the Petitioner:MR.DILIP KUMAR SHIRADKAR

Counsel for the Respondent Nos.1 and 2: MR.RAMA RAO GANTA

The Court at the stage of admission made the following :

ORDER:

The petitioner herein claims to be tenant of third respondent for the last about 40 years in respect of premises bearing No. 15-5-96, Afzal Gunj, Hyderabad. while so, a notice dated 1-12-2004 under section 459 of the Hyderabad Municipal Corporation Act was issued requesting the petitioner to vacate the said premises immediately and repair/remove the dilapidated structure of the said premises within 7 days. Questioning the said notice, the present writ petition is filed.

Learned counsel for petitioner submits that Section 459 of the Act provides that reasonable opportunity of stating objections and adducing evidence has to be given to the petitioner before issuing notice for removal of structure and without affording any opportunity the impugned notice was issued. It is further stated that this Court considered similar matter and disposed of W.P.2057 of 2003 dated 23-3-2004 permitting the petitioners therein to file their objections and directing the respondents to consider such objections and pass appropriate orders.

Heard learned counsel for petitioner and learned Standing Counsel for respondent Municipality Mr.G.Rama Rao. Both counsel agreed for disposal of the writ petition at the admission stage.

Admittedly, without calling for objections from the petitioner under Section 459 of the Act, the impugned notice was issued to the petitioner, as such the same is not justified. Hence, following the order of this Court in W.P.2057 of 2003 dated 23-3-2004, the writ petition is disposed of directing the respondents to treat the notice dated

1-12-2004 as a show cause notice within the meaning of Section 459 of the Act and permit the petitioner to file objections within a period of six weeks from the date of

receipt of copy of this order. On filing such objections, the respondent nos.1 and 2 are directed to consider the objections of the petitioners and pass appropriate orders and communicate the same to the petitioner. No costs.

_____ **N.V.RAMANA,J**

10-12-2004

TVK

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Commissioner, Municipal Corporation of Hyderabad Tank Bund
Road,Hyderabad

2 The Assistant City Planner Town Planning Section, Circle No.II
Municipal Corporation of Hyderabad Sardar Mahal, Charminar,
Hyderabad.

3. 2 CD copies